APPEAL NO. 94236

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). On October 27, 1993, and January 24, 1994, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. The respondent, JC, who is the claimant herein, injured his back in the course and scope of his employment with (employer) on (date of injury). The fact of an injury was not disputed at the hearing; the sole issue was whether the claimant timely reported an injury to his employer as required by Section 409.001 of the 1989 Act.

The hearing officer determined that the claimant had reported the injury to the employer when he told his supervisor the day the injury occurred.

The carrier has appealed, citing at length the evidence in its favor. The carrier also disputes in its appeal that an injury occurred. The claimant responds that the decision should be affirmed.

DECISION

We affirm the hearing officer's decision and order.

The hearing officer's decision sets out the evidence in some detail; we will be more brief. Claimant worked for 10 years in the shipping and receiving department of the employer, under the supervision of (Mr. G). Claimant said he was injured on (date of injury), when he and a coworker, (Mr. O), lifted and carried a heavy piece of manufacturing machinery from the employer's parking lot, up the stairs, and into the plant. This was an unusual occurrence because all four shipping docks were occupied, so that usual unloading equipment could not be used. Claimant experienced stinging in his back. He said he told Mr. G on (date of injury), that he hurt his back during the unloading, but Mr. G just went on his way. Over the following days and weeks claimant's back got so bad that he curtailed his activities. Claimant ended up going to the plant nurse and filing a formal report of injury on June 2, 1993. He said he kept working through pain to this point out of financial necessity.

Claimant also said he told the plant manager of the injury two weeks after it happened. Claimant was able to pinpoint the date of injury after reviewing shipping receipts for equipment, and in this way explained his initial confusion as to the date the injury occurred.

Mr. O testified and agreed with the sequence of events and claimant's injury during unloading. He did not recall if Mr. G was there, and did not know about what claimant told Mr. G.

Mr. G said he did not recall being told about claimant's injury until shortly before he filed his claim. Generally, Mr. G's testimony did not rule out the sequence of events leading to injury as a possibility; his general statements were simply that he did not recall. Likewise,

while he did not recall claimant telling him he was injured until shortly before going to the nurse, he said he could not say claimant didn't tell him.

The determination before the hearing officer boiled down to credibility, which includes not only the assessment of truthfulness but accuracy in recalling events long passed. The hearing officer is the sole judge of the relevance, the materiality, weight and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Co. of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The trier of fact may believe all, part or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.).

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

Regarding protracted testimony about employer's "same day" injury reporting requirement, we would emphasize that the reporting requirement relevant to the claim is that set out in the 1989 Act, Section 409.001, which requires that the injured employee give notice of a specific injury to a person in a supervisory or management capacity within 30 days. The hearing officer obviously believed that claimant told Mr. G of his injury the day it occurred; a finding that claimant told his plant manager two weeks later would also have had support in the evidence. Either point is well within the 30-day period required by the 1989 Act.

As to whether an injury occurred on (date of injury), this was not in issue either in the benefit review conference or the contested case hearing and is, therefore, not subject to review by the Appeals Panel. *See* Section 410.151(b). Whether or not the compensability of the injury itself could still be disputed would be governed by Section 409.021.

We affirm the decision and order of the hearing officer.

Susan M. Kelley
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Thomas A. Knapp
Appeals Judge